

REMARKS

Favorable reconsideration of this application is currently constituted as respectfully requested.

1. Objection to the Specification

The Examiner objected to the informality on page 4, line 21. "FIG. 6" has been changed to FIGS. 6A-6B. No new matter has been added.

2. Objection to the Drawings

The Examiner objected to the drawings in that claims 7, and 30 recite a spray device and claims 18 and 36 recite a pump unit which are alleged not to be shown in the drawings. Applicant has supplied proposed additional drawings and labeled them as FIGS. 6C and 6D. The proposed drawings depict schematic illustrations of conventional pump and spray devices as described in the original specification as filed. Further, Applicant has amended the specification as described above to describe FIGS. 6C and 6D as illustrating a pump and a sprayer, respectively. Support from the amendments to the drawings and specification, as set forth above, can be found in at least page 11, line 1-11 of the application as originally filed. It is respectfully submitted that no new matter has been added.

3. Rejection of Claims 1-4,6-8,15-27, 29-30, 34-37

Claims 1-4,6-8,15-27, 29-30, 34-37 stand rejected as being unpatentable over U.S. Patent Number 5,156,299 to De Caluwe et al. ("De Caluwe") in view of U.S. Patent Number 6,039,213

to Sloan et al. ("Sloan"). Specifically, the Examiner argues that the refillable container of De Caluwe which comprises a vessel of known volume adapted for holding a volume of substance therein when combined with the means for identifying a substance within a container of Sloan obviates the refillable container of the present invention. Applicant respectfully disagrees for at least two reasons.

First, the container of De Caluwe is designed to be "separated in two parts (11a and 11b) so that a flexible disposable recharge can be inserted and attached through a connecting piece as illustrated in the second preferred embodiment." See Col. 4, Lns. 49-52. The second embodiment of De Caluwe requires that the substance be contained in a separate disposable refill package, which requires a special tip to puncture the refill package.. In contrast, the present invention does NOT require a separate refill package to be inserted into the container.

Applicant's invention solves a different problem than the invention of De Caluwe. The motivation for De Caluwe is not to eliminate waste, but to provide an apparatus for the refilling of a bottle with a pre-packaged re-fill. An advantage of the Applicant's invention is that of providing a quick and easy apparatus for users who buy products in bulk, or who buy large amounts of a substance and need a smaller bottle to dispense those substances.

Second, the container of De Caluwe creates an environmental problem by using the refillable discharge packs. Each time a user of the De Caluwe container exhausts the substance contained in the refillable discharge pack, the spent pack must be discarded. This is contrary to the present invention, which utilizes a refill assembly designed for the pouring of a substance contained within a larger container into a smaller container.

Further, the combination of De Caluwe with Sloan fails to cure the deficiencies of De Caluwe. Sloan merely recites the use of an identification means on the container. Therefore, Applicant respectfully submits that the inventive aspects of Claims 1-4, 6-8, 15-27, 29-30, and 34-37 are not taught, suggested, or rendered obvious by the cited combination of De Caluwe and Sloan, and Applicant respectfully submits that Claims 1-4, 6-8, 15-27, 29-30, 34-37 are in condition for allowance.

4. Rejection of Claims 5, 28, and 38

The Examiner further argues that Claims 5, 28, and 38 are unpatentable over De Caluwe in view of Sloan as applied to Claims 2, 22 and 34, and further in view of U.S. Patent Application No. 09/775,609 to Klima, Jr., et al. ("Klima"). Applicant respectfully disagrees.

Klima requires the use of a check valve "to allow the pre-mixed liquid chemical to be poured into the second neck portion 18 to a level vertically above the top of the second neck portion 18." See Para. 0040. Furthermore, without the check valve 34 in the second neck portion 19, the dispenser 12 could only be filled to a level corresponding to the top of the second neck portion 18. The disposable bottle of the present invention does not require the additional check valve to completely fill the container. Thus, the addition of Klima does NOT cure the deficiencies of De Caluwe. Neither Klima nor De Caluwe teach, suggest, or render obvious a bottle design which has a larger refill orifice and a small discharge orifice located in line one with the other to allow easy refilling of the entire bottle.

Thus, De Caluwe, Sloan, and Kilma do not teach, suggest, or render obvious the inventive aspects of Applicant's invention. For at least the above reasons, Applicant respectfully submits that Claims 5, 28, and 38 are in condition for allowance.

5. Rejection of Claims 9-10, and 31-32

The Examiner argues that Claims 9-10, and 31-32 are unpatentable over De Caluwe in view of Sloan as applied to Claims 1 and 22, and further in view of U.S. Patent No. 5,301,845 to Labonte ("Labonte"). The Applicant respectfully disagrees for at least the above -mentioned reasons as discussed. Labonte teaches the use of having a flexible container. However, Labonte fails to cure the deficiencies of De Caluwe in view of Sloan. For the above mentioned reasons, and given that Claims 9-10 and 31 -32 depend from independent claims 1 and 22, Applicant respectfully submits that Claims 9-10 and 31-32 are now in a condition for allowance.

6. Rejection of Claims 11 and 33

The Examiner argues that Claims 11 and 33 are rejected as being unpatentable over De Caluwe in view of Sloan as applied to claims 1 and 25 above, and further in view of U.S. Patent 5,265,769 to Wilson ("Wilson"). However, Wilson fails to cure the deficiencies of De Caluwe in view of Sloan. For at least the aforementioned reasons, and because these claims depend from independent claims 1 and 22, the Applicant respectfully submits that claims 11 and 33 are in a condition for allowance.

7. Rejection of Claims 1, 12 and 13

The Examiner argues that Claims 1, 12, and 13 are rejected under De Caluwe as applied to U.S. Patent 5,664,704 to Meadows et al. ("Meadows"). Meadows is cited as teaching a labeling means. For similar reasons, as discussed above, Meadows fails to cure the deficiencies of De Caluwe. Applicant respectfully submits that Claims 1, 12 and 13 are now in a condition for allowance.

In view of the above, it is believed that this application is in condition for allowance, and such a Notice is respectfully requested.

Respectfully submitted,

JENKENS & GILCHRIST,
A Professional Corporation

A handwritten signature in black ink, appearing to read "Michael W. Maddox", with a stylized flourish at the end.

Michael Maddox
Reg. No. 47,764

1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2799
(214) 855-4713
(214) 855-4300 (fax)